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Honorable J. David Stout
Mayor, City of Fort Payne
200 Gault Avenue, South
Fort Payne, AL 35967

Municipalities - Health
Insurance, Boards of -
Directors - Offices and Officers

Trustee of Improvement
Authority may participate, at
own expense, in group health
plan for officers and employees
of Authority. If premium paid
by the board for the trustee
does not exceed the compensa-
tion allowed, it may be paid in
lieu of direct payment of
compensation. Federal law,
COBRA, requires former
participant be afforded certain
coverage and conversion option.

Dear Mayor Stout:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTIONS

1. May the trustees of an Improvement Authority incorporated pursuant to §§ 39-7-1, et seq., Code of Alabama 1975, and their dependents, be included as beneficiaries of the group health insurance plan provided by the Authority for its employees?
2. May former trustees continue to participate in such a plan after termination of their membership on the board of trustees?

FACTS, LAW AND ANALYSIS

An improvement authority incorporated pursuant to the provisions of §§ 39-7-1, et seq., Code of Alabama 1975, is an incorporated municipal board within the purview of §§ 11-91-1, et seq., Code of Alabama 1975.

Section 11-91-1 provides, in pertinent part:

"The council . . . or similar governing body of each municipal corporation, the board of directors of each incorporated municipal boards . . . shall have power and authority to contract for and obtain and maintain policies of group life, health, accident and hospitalization insurance or any one or more of them . . . for the benefit of such of the officers and employees of such . . . incorporated municipal board as may be determined by such governing body and as shall or may elect to accept the same and who have authorized in writing such governing body to make deductions from their compensation to pay premiums on any such policy or policies if such premiums are payable in whole or in part by such officer or employee."

In Section 11-91-3, Code, supra, we find:

"It is hereby declared to be the intent of the legislature that any such governing bodies shall have the power and authority to determine in their sole discretion the class or classes of officers or employees who are to be insured under any such policy or policies, the amount, nature and kind of insurance upon each such officer and employee and class thereof and whether the premium therefor shall be paid in whole or in part by such governing bodies and, if in part, the amount thereof that will be so paid."

The compensation of members of the board of an improvement authority is set by § 39-7-17 at no more than \$75.00 per

month. We understand that the participating trustees pay the premiums for their medical coverage. Where the board member pays all of the costs associated with participation in a group policy, and the contract allows his participation in such policy, it is the opinion of this office that such participation does not constitute additional compensation as a benefit. Also, if the premiums paid by the board for the trustee do not exceed the compensation allowed by law, the board may participate in providing such coverage in lieu of paying the compensation directly to the trustee. Accordingly, your first question is to be answered affirmatively.

Having determined that a trustee may, at his own expense, participate in a group health insurance plan provided for the officers and employees of the improvement authority, we turn to a consideration of your second question which concerns former trustees. In this connection we note that the provisions of a federal law commonly referred to as COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L 99-272) apply. These provisions are found in the federal code at 42 USC 300bb-1 through 300bb-8. The specific provisions which we must consider are:

42 USC 300bb-1(a)

"In accordance with regulations which the Secretary shall prescribe, each group health plan that is maintained by any State that receives funds under this chapter, by any political subdivision of such a State, or by any agency or instrumentality of such a State or political subdivision, shall provide, in accordance with the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan."

42 USC 300bb-3

"For purposes of this subchapter, the term 'qualifying event' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this

subchapter, would result in the loss of coverage of a qualified beneficiary:

"(1) The death of the covered employee.

"(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

"(3) The divorce or legal separation of the covered employee from the employee's spouse.

"(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C.A. § 1395, et seq.].

"(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan."

42 USC 300bb-8(2)

"The term 'covered employee' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of Title 26)."

In addition to these sections, Section 300bb-2(5) requires that a conversion option be provided.

In view of the requirements of COBRA, noted above, your second question must be answered in the affirmative.

CONCLUSION

Trustees of an Improvement Authority incorporated pursuant to §§ 39-7-1, et seq., Code of Alabama 1975, may be included as

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beneficiaries of a group health insurance plan provided by the Authority for its officers and employees if the board decides to include them, the contract permits their inclusion and each pays the costs involved in his participation in the plan. The Authority may not pay the premium for such trustees beyond the amount of compensation provided by law. A former trustee who participated in such a plan is to be allowed to participate under the provisions of the federal law. COBRA, §§ 300bb-1, et seq., of Title 42 of the United States Code, for 180 days after termination or other qualifying event as prescribed in the law, and to be given a conversion option pursuant to 42 U.S.C. 300bb-2(5).

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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